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Supreme Court, U.S.
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OFFICE OF THE CLERK
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IN THE

SUPREME COURT OF THE UNITED STATES

COLBY E. EWING

Petitioner

V.

STATE OF MAINE, MAINE DISTRICT COURT, AND
VICKIE HARRIS, CLERK OF THE MAINE DISTRICT COURT

Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE MAINE SUPREME JUDICIAL COURT

PETITION FOR A WRIT OF CERTIORARI and APPENDIX

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QUESTIONS PRESENTED

1. Whether the State of Maine, acting through the director of the central administrative office of the Maine District Court and the Clerk of the Maine District Court, deprived Petitioner of his right to keep and bear arms without due process of law by creating and implementing a policy under which citizens are identified as persons prohibited from possessing firearms or ammunition pursuant to 18 U.S.C. § 922(g)(8) in circumstances where the parties agree to the issuance of a domestic protection order without conducting an actual hearing.

2. Whether the State of Maine, acting through the director of the central administrative office of the Maine District Court, and the Courts of Appeal for the Fifth, Sixth, Eighth, and Ninth Circuits, incorrectly interpreted and applied the provisions of 18 U.S.C. § 922(g)(8)(A) to mean that the hearing requirement is met when the parties appear before a judge and have an opportunity to present arguments or evidence, regardless of whether an actual hearing is conducted or not.

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OPINIONS BELOW

The opinion of the Maine Supreme Judicial Court, sitting as the Law Court, is reported at 2009 ME 16, 964 A.2d 644, and is reproduced at Appendix, page 1a.

The opinion of the Maine Superior Court (*Aroostook County, Cuddy, J.*) is not reported, and is reproduced at Appendix, page 14a.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) on the ground that the Maine Supreme Judicial Court, sitting as the Law Court, rendered a final judgment in this matter affirming the dismissal of Petitioner, Colby E. Ewing's, case which specifically set up claims that his right to keep and bear arms under the Second Amendment of the United States Constitution was deprived without due process of law in violation of the Fourteenth Amendment of the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Second Amendment of the United States Constitution provides that "[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. CONST. amend. II.

The Fourteenth Amendment of the United States Constitution provides in relevant part that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law ...." U.S. CONST. amend. XIV.

Title 18 U.S.C. § 922(g) (2005) provides in relevant part that:

> It shall be unlawful for any person—
> ....
> (8) who is subject to a court order that—
>
> > (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
> > (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
> > (C)(i) includes a finding that such person represent a credible threat to the physical safety of such intimate partner or child; or
> > (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would

> reasonably be expected to cause bodily injury;
>
> ....
>
> to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

STATEMENT

This case raises important and recurring constitutional issues involving the deprivation of citizens' right to keep and bear arms under the Second Amendment of the United States Constitution as a result of the incorrect and doubtful interpretation and application by the government of the provisions of 18 U.S.C. § 922(g)(8) which prohibit persons subject to a qualifying domestic protective order from possessing firearms or ammunition.

These constitutional issues are of widespread and national significance and they impact millions of citizens of the United States because of the unfortunate ubiquity of domestic violence matters processed in the trial courts throughout the United States; and because of the pervasive and growing use of computers and national/international computer databases to share and rely upon information regarding the identity and legal status of citizens to determine the eligibility of citizens to maintain the rights, privileges and immunities guaranteed to them under the United States Constitution.

Because information identifying a citizen as a person prohibited from possessing firearms or ammunition is instantly available on various computer and law enforcement databases throughout the United States and the world, and because the information is used terminate the constitutional rights of citizens to keep and bear arms, the interpretation and application of the provisions of 18 U.S.C. § 922(g)(8) raise important constitutional issues which should be addressed and clarified by the Court.

Petitioner, Colby E. Ewing, is a resident of the City of Caribou, Maine, and was married to and subsequently divorced from Leah Ewing. On February 7, 2006, the Maine District Court (Caribou, *Daigle, J.*) entered an Order for Protection from Abuse in favor of Leah Ewing and against Ewing after due notice and an opportunity for a full hearing. See Appendix at 15a. Both Ewing and his ex-wife were present at the Maine District Court on February 7, 2006.

By agreement, the parties, elected to forgo any hearing on Leah Ewing's complaint, and agreed to the issuance of an Order for Protection from Abuse by the Maine District Court. In its Order, the Maine District Court found that: "(1) The parties are family or household members; [and] (4) The parties have agreed to the following Order, which is made without findings of abuse." The Maine District Court did not find that Leah Ewing was abused by Ewing, and did not find that Ewing presented a credible threat to the physical safety of Leah Ewing.

The Order issued by the Maine District Court also contained the following provisions which were selected by checking off boxes for the pre-printed paragraphs labled (A-1), (A-2), (B), (C), (D), and (E). Paragraph A-1 provided that: "The defendant is prohibited from threatening, assaulting, molesting, attacking, harassing or otherwise abusing the plaintiff and any minor child(ren) residing in the household." Paragraph A-2 provided that: "The defendant is prohibited from the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily injury against the plaintiff or a minor child residing in the household."

The Order also contained the following statement: POSSESSION OF A FIREARM OR AMMUNITION WHILE THIS ORDER IS IN EFFECT IS PROHIBITED UNDER FEDERAL AND/OR STATE LAW IF ANY ONE OR MORE OF THE FOLLOWING BOXES HAVE BEEN CHECKED: A-1, A-2, 0R F. The statement appeared in a separate section of the Order and did not expressly state that it applied in circumstances where the parties agreed to the issuance of an Order without conducting a hearing. The form Order does not contain any definition of what constitutes a hearing for the purpose of triggering the prohibition against possession of firearms or ammunition under Federal law.

After the Maine District Court issued its Order for Protection from Abuse, an assistant clerk of the Maine District Court entered into the court's computer reporting system information identifying

Ewing as a person prohibited from possessing a firearm under Federal law. See Appendix at 21a. The information was entered into the court's computer reporting system pursuant to, and in accordance with, a policy established by the central administrative office of the Maine District Court, which dictated that persons must be identified as persons prohibited from possessing firearms or ammunition under Federal law whenever boxes (A-1) and (A-2) are selected in an Order for Protection from Abuse. The policy was created by the director of the central administrative office of the Maine District Court in collaboration with a committee comprised of representatives from the Maine judiciary and the office of the United States Attorney. The policy is based on an interpretation of the provisions of 18 U.S.C. § 922(g)(8) by the director of the central administrative office of the Maine District Court and the representatives of the Maine judiciary and the office of the United States Attorney. The policy was implemented by the director of the central administrative office of the Maine District Court through the creation of the form Order for Protection from Abuse which was disseminated to, and is required to be used by, all of the District Courts in Maine.

Because the information was entered into the Maine District Court's computer reporting system, it was shared with all law enforcement agencies through the National Crime Information Center ("NCIC") and other national databases, including those used by the United States and Canadian Customs and Border Patrol agencies. Ewing's identification in the national databases as a person

prohibited from possessing firearms or ammunition terminated his constitutional right to keep and bear arms; led to lengthy detentions at the United States-Canadian border which made it impossible for him to conduct his work as a long-haul truck driver; and adversely affected his work as a professional Maine guide due to his inability to possess a firearm.

By a letter, dated August 23, 2007, Ewing gave the Maine District Court and the Clerk of the Maine District Court notice that (a) the Maine District Court and the Clerk of the Maine District Court had incorrectly and illegally identified him as a person prohibited from possessing a firearm or ammunition under Federal law; (b) the entry of the incorrect and illegal information identifying Ewing as a person prohibited from possessing a firearm or ammunition under Federal law had caused, and was causing, Ewing substantial damages; and (c) the incorrect and illegal information had to be immediately removed from the Maine District Court's computer reporting system. See Appendix at 26a.

The August 23, 2007 letter was directed to the assistant clerk of the Maine District Court who forwarded the August 23, 2007 letter to the Judge of the Maine District Court located at Caribou, Maine, and the director of the central administrative office of the Maine District Court in Augusta, Maine. Neither the Maine District Court, the Clerk of the Maine District Court, nor the director of the central administrative office of the Maine District Court took any action in response to Ewing's August 23, 2007 letter.

On December 12, 2007, Ewing filed a Complaint in the Superior Court seeking a declaratory judgment pursuant to 14 M.R.S. § 5951 (2008) and Rule 57 of the Maine Rules of Civil Procedure that: (1) the Maine District Court, the Clerk, and the director of the central administrative office incorrectly interpreted and applied 18 U.S.C. § 922(g)(8) by identifying him as a person prohibited from possessing a firearm or ammunition when the Order for Protection from Abuse was issued by agreement of the parties without a hearing, and (2) the improper designation deprived him of his rights under the United States and Maine Constitutions and caused him damages. Ewing also sought a writ of mandamus and permanent injunction requiring the clerk to remove his name from the computer reporting system, as well as relief pursuant to 42 U.S.C. § 1983 for violations of his civil rights and 18 U.S.C. § 925A for the entry of incorrect information into a computer database.

The State of Maine filed a motion to dismiss for failure to state a claim upon which relief may be granted pursuant to Rule 12(b)(6) of the Maine Rules of Civil Procedure. On February 7, 2008, before the Maine Superior Court issued a decision on the motion to dismiss, the Order for Protection from Abuse expired. On June 4, 2008, the Superior Court granted the State's motion to dismiss. Ewing then filed a timely appeal to the Maine Supreme Judicial Court.

By a decision dated February 17, 2009, the Maine Supreme Judicial Court found that the

expiration of the Order for Protection from Abuse did not render Ewing's claims moot because the issues raised by Ewing were significant and capable of repetition without an opportunity for appellate review, see Me. Civil Liberties Union v. City of So, Portland, 1999 ME 121, ¶ 10, 734 A.2d 191, 195, but affirmed the Maine Superior Court's dismissal of Ewing's Complaint on the ground that the Court lacked subject matter jurisdiction because Ewing could only challenge the action taken by the Maine District Court in entering into the court computer information based on the Order for Protection from Abuse by (1) filing a motion to correct a clerical mistake pursuant to Rule 60(a) of the Maine Rules of Civil Procedure; (2) filing a motion for relief from judgment pursuant to Rule 60(b)(6) of the Maine Rules of Civil Procedure; or (3) challenging the Maine District Court's action or lack of action on a Rule 60(a) or Rule 60(b) motion by a direct appeal to the Maine Supreme Judicial Court in accordance with Rule 1 of the Maine Rules of Appellate Procedure.

REASONS FOR GRANTING THE PETITION

The Court should grant this Petition because (1) the State of Maine, through its director of the central office of the Maine District Court, took unilateral and unreviewable action that deprives citizens of their constitutional right to keep and bear arms without affording them any due process by creating and implementing a policy under which citizens are identified as persons prohibited from possessing firearms or ammunition under 18 U.S.C. § 922(g)(8) when a citizen is the subject of a domestic

protection order that was issued by agreement of the parties without conducting an actual hearing; (2) the policy is based on an incorrect interpretation by the State of Maine and the United States Courts of Appeals for the Fifth, Sixth, Eight, and Ninth Circuits of what constitutes a hearing for the purposes of triggering the firearms and ammunition prohibitions under 18 U.S.C. § 922(g)(8)(A); and (3) the Maine Supreme Judicial Court's rejection of Ewing's substantial constitutional and due process claims leaves unanswered the important, unsettled, and recurring constitutional question of what constitutes a hearing for the purposes of triggering the firearms and ammunition prohibitions under 18 U.S.C. § 922(g)(8)(A). The Court must review this case and settle the constitutional question because the application of 18 U.S.C. § 922(g)(8) has widespread impacts on the constitutional rights of millions of citizens throughout the United States who are and will become the subject of domestic protection orders.

I. The State of Maine Deprived Ewing of his Constitutional Right to Keep and Bear Arms without Due Process of Law.

As a citizen of the United States, Ewing enjoys the right to keep and bear arms under the Second Amendment of the United States Constitution. Pursuant to the Fourteenth Amendment of the United States Constitution, this right could not be deprived by the State without due process of law.

The action taken by the State of Maine, through its director of the central administrative office of the Maine District Court deprived Ewing, and every other citizen who has agreed or will agree to the issuance of a domestic protection order without conducting an actual hearing on the matter, of the right to keep and bear arms without any due process of law. In fact, the State of Maine afforded its citizens no process at all. In effect, the State of Maine effected a deprivation of the right to keep and bear arms in a vacuum outside of the three branches of government and beyond the reach, review or challenge of any citizen.

By creating and implementing its policy for identifying persons subject to domestic protection orders issued by agreement of the parties without an actual hearing as prohibited persons through its director of the central administrative office of the Maine District Court, the State of Maine was able to interpret and apply its interpretation of the provisions of 18 U.S.C. § 922(g)(8) without affording any citizen an opportunity to participate in or challenge the interpretation. The State of Maine's actions in doing so were not legislative, such that Ewing or any other citizen could participate in the process through his elected representatives and the legislative process; they were not judicial, such that Ewing or any other citizen could participate in the process through the judicial decision-making and appeal process; and they were not executive, such that Ewing or any other citizen could participate in the process through his elected representatives in the executive branch of government.

The Maine Supreme Judicial Court's rejection of Ewing's substantial claims based on the extreme actions of the State of Maine failed to address the violation of Ewing's constitutional rights and, therefore, warrants review by this Court.

II. The Interpretation of the Provisions of 18 U.S.C. § 922(g)(8)(A) by the State of Maine and the Courts of Appeal for the Fifth, Sixth, Eighth, and Ninth Circuits is Incorrect and Unsettled.

The portion of 18 U.S.C. § 922(g)(8)(A) at issue in this case provides that a qualifying domestic protection order is one that "was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate ...." The State of Maine, through its director of the central administrative office of the Maine District Court, interpreted the language in the statute to mean that the hearing requirement is met when the parties appear before a judge and have an opportunity to present arguments or evidence, regardless of whether an actual hearing is conducted or not. This interpretation is the same as that made by the Courts of Appeal for the Fifth, Sixth, Eighth, and Ninth Circuits. See United States v. Banks, 339 F.3d 267, 272-73 (5th Cir. 2003); United States v. Calor, 340 F.3d 428, 430-31 (6th Cir. 2003); United States v. Lippman, 369 F.3d 1039, 1042 (8th Cir. 2004); United States v. Young, 458 F.3d 998, 1009 (9th Cir. 2006). However, the interpretation by the State of Maine and the referenced United States Courts of Appeal is incorrect and should be clarified by this Court for two important reasons.

First, the plain language of 18 U.S.C. § 922(g)(8)(A) does not support the interpretation relied upon by the State of Maine and the United States Courts of Appeal. In the statute, the word "hearing" is followed by two prepositional phrases: "of which such person received actual notice," and "at which such person had an opportunity to participate." Because the word "hearing" is a noun, the prepositional phrases function as adjectives to modify or describe the word "hearing." As adjectives, the prepositional phrases function not to nullify the requirement of a hearing, but to describe or restrict the conditions attendant to the conduct of the hearing.

By its plain language, therefore, 18 U.S.C. § 922(g)(8)(A) still requires that a qualifying domestic protection order be issued after a hearing. The hearing must be one "of which" the defendant had actual notice, and it must be one "at which" the defendant had an opportunity to participate. These requirements related to conduct of the hearing cannot fairly be interpreted to eliminate the requirement of a hearing in order to trigger the Federal prohibition against the possession of firearms or ammunition in cases where the parties expressly agree to avoid a hearing simply because the defendant had notice of and an opportunity to participate in a hearing before the issuance of the order. To the contrary, the requirements of notice and opportunity to participate address practical concerns for protecting defendants from being deprived of their constitutional right to keep and bear arms as a result of an order issued without

their knowledge and opportunity to participate, and for allowing plaintiffs to obtain orders for protection even if the defendant refuses to appear after receiving notice of the hearing.

When correctly interpreted, the language of the statute gives parties the ability to reach an agreement whereby the plaintiff can obtain the domestic protection order desired (including one with the prohibitions in paragraphs A-1 and A-2 of the Maine District Court's form Order) without incurring the time, risk and expense involved in conducting a hearing, and the defendant can resolve the matter by agreeing to the issuance of such a protection order without giving up or losing the right to keep and bear arms. The interpretation of the State of Maine and the United States Courts of Appeal referenced above eliminates these common sense options and creates the illogical circumstance in which parties who expressly agree to forgo a hearing are deemed to have participated in a hearing, with the result being that parties can never agree to the issuance of a protection order containing the prohibitions in paragraphs A-1 and A-2 without triggering the firearms and ammunition prohibitions of 18 U.S.C. § 922(g)(8).

Second, the proper distinction between what constitutes a hearing and what does not constitute a hearing has been recognized by the United States Court of Appeals for the Fifth Circuit in U.S. v. Spruill, 292 F.3d 207, 219 (5th Cir. 2002), where the Court stated the correct rule that 18 U.S.C. § 922(g)(8)(A) "is best understood as not directed only to procedural due process concerns but as well to the

concept that federal legislation should not affix to state court domestic relation protective orders the collateral effect of imposing serious federal felony penalties for conduct not violative of the order itself or otherwise illegal, unless a judge has conscientiously indeed concluded, after an actual hearing, that such was reasonably necessary to prevent otherwise likely conduct as described in section 922(g)(8)(B) and (C), as opposed to the judge merely approving without an actual hearing an order agreed to by the parties out of court 'to facilitate settlement,' a process in which, as stated in Janus Films, supra, the judge 'normally has only a limited role,' generally 'makes no determination of the merits,' and 'normally makes only the minimal determination of whether the agreement is appropriate to be accorded the status of a judicially enforceable decree.'

Because the State of Maine acted on an incorrect and doubtful interpretation of 18 U.S.C. § 922(g)(8)(A) which is shared by the Courts of Appeal for the Fifth, Sixth, Eighth, and Ninth Circuits, the Court should review this case in order to settle the issue of what constitutes a hearing for the purposes of triggering the Federal firearms prohibitions established in 18 U.S.C. § 922(g)(8).

III. The Court Must Resolve the Unsettled Constitutional Question of What Constitutes a Hearing for the Purposes of Triggering the Firearms Prohibitions under 18 U.S.C. § 922(g)(8)(A) Because the Application of 18 U.S.C. § 922(g)(8) has Widespread Impacts on the Constitutional Rights of Millions of Citizens Throughout the United States.

The impact and effect of the application of 18 U.S.C. § 922(g)(8) on citizens across the United States is widespread and substantial. In its 2007 Annual Report, the Maine Judicial Branch reported 6,079 new case filings seeking orders for protection from abuse, and 4,623 new case filings seeking order for protection from harassment. A study conducted by the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, noted that between two and three million temporary restraining orders are issued each year. Although the amount of final orders for protection from abuse is likely less than the amount of temporary orders, these statistics make clear that the firearms prohibitions of 18 U.S.C. § 922(g)(8) have a widespread and significant impact on the constitutional rights of a very large number of citizens across the United States.

These widespread impacts are compounded by the increasingly pervasive use of computer databases to share and rely upon information regarding the identity and legal status of citizens to determine the eligibility of citizens to maintain the rights, privileges and immunities guaranteed to them under the United States Constitution. As a

result, the incorrect and doubtful application of the firearms prohibitions under 18 U.S.C. § 922(g)(8) has immediate and far-reaching impacts on millions of United States citizens each year.

The Maine Supreme Judicial Court's rejection of Ewing's substantial constitutional and due process claims, and the incorrect and doubtful interpretation of the provisions of 18 U.S.C. § 922(g)(8) by the Courts of Appeal for the Fifth, Sixth, Eighth, and Ninth Circuits, leave unanswered and unsettled the important and recurring constitutional question of what constitutes a hearing for the purposes of triggering the firearms and ammunition prohibitions under 18 U.S.C. § 922(g)(8)(A). Accordingly, this Court must review this case and settle the constitutional question because the application of 18 U.S.C. § 922(g)(8) has widespread impacts on the constitutional rights of millions of citizens throughout the United States who are and become the subject of domestic protection orders.

IV. The Maine Supreme Judicial Court Erred in Affirming the Dismissal of Ewing's Complaint for Lack of Subject Matter Jurisdiction.

The Maine Supreme Judicial Court affirmed the Maine Superior Court's dismissal of Ewing's Complaint on the ground that the Superior Court lacked subject matter jurisdiction because Ewing could only challenge the action taken by the Maine District Court in entering into the court computer information based on the Order for Protection from Abuse by (1) filing a motion to correct a clerical mistake pursuant to Rule 60(a) of the Maine Rules of

Civil Procedure; (2) filing a motion for relief from judgment pursuant to Rule 60(b)(6) of the Maine Rules of Civil Procedure; or (3) challenging the Maine District Court's action or lack of action on a Rule 60(a) or Rule 60(b) motion by a direct appeal to the Maine Supreme Judicial Court in accordance with Rule 1 of the Maine Rules of Appellate Procedure.

The Maine Supreme Judicial Court erred in affirming the Superior Court's dismissal on subject matter jurisdiction grounds because Ewing did not need to correct the Order for Protection from Abuse or obtain relief from the Order pursuant to Rule 60 of the Maine Rules of Civil Procedure. The issue in this case does not involve the terms contained in the Order for Protection from Abuse issued by the Maine District Court. The issue involves the manner and the circumstances under which the information contained in the Order for Protection from Abuse was entered into the Maine District Court's computer reporting system resulting in the improper identification of Ewing as a person prohibited from possession of firearms or ammunition under 18 U.S.C. § 922(g)(8). Under a proper interpretation and application of the statute, Mr. Ewing should not have been identified as a prohibited person regardless of the terms contained in the Order for Protection from Abuse, because the Order was not issued after a hearing.

Because the Order did not contain any clerical mistake, and because Ewing did not require relief from the terms of the Order, Ewing did not need to challenge the action taken by the State of Maine via

the procedures set forth in Rule 60 of the Maine Rules of Civil Procedure. He needed to, and could only, challenge the State of Maine's interpretation and application of the provisions of 18 U.S.C. § 922(g)(8) by a declaratory judgment suit because the State's action was taken not by the Maine District Court in its judicial capacity, but by the director of the central administrative office of the Maine District Court. As such, the action was outside of the normal judicial and governmental purview which would be subject to review under the regular Maine Rules of Civil Procedure. Accordingly, the Maine Supreme Judicial Court erred in affirming the dismissal of Ewing's Complaint for lack of subject matter jurisdiction.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX

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MAINE SUPREME JUDICIAL COURT
Reporter of Decisions
Decision: 2009 ME 16
Docket: Aro-08-383
Argued: January 14, 2009
Decided: February 17, 2009

Panel: SAUFLEY, C.J., and CLIFFORD, ALEXANDER, LEVY, MEAD, and GORMAN, JJ.

COLBY E. EWING

V.

MAINE DISTRICT COURT et al.

ALEXANDER, J.

[¶1] Colby E. Ewing appeals from a judgment of the Superior Court (Aroostook County, *Cuddy J.*) dismissing his complaint against the District Court (Caribou) and the Clerk of the District Court. Ewing's complaint alleged, among other claims, constitutional violations and damages resulting from being identified in the court's computer system as a person prohibited by federal law from possessing a

firearm or ammunition pursuant to 18 U.S.C.S. § 922(g)(8) (2005).[1]

---

[1] Title 18 U.S.C.S. § 922(g) (2005) provides:

> It shall be unlawful for any person-
>
> . . . .
>
> (8) who is subject to a court order that-
> (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
> (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
> (C) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
> (ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;
>
> . . . .
>
> to ship or transport interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

[¶2] Because the Superior Court lacked jurisdiction to consider Ewing's challenge to the District Court's failure to act on his request that it amend its judgment or its docket entries reflecting entry of judgment, we affirm the Superior Court's dismissal of Ewing's complaint, concluding that the complaint should have been dismissed for lack of subject matter jurisdiction pursuant to M.R. Civ.P. 12(b)(1).

I. CASE HISTORY

[¶3] There is no dispute about the facts as stated in the complaint.[2]

[¶4] On February 7, 2006, Ewing and his former wife appeared before the District Court (Caribou, *Daigle, J.*) for a final hearing on her complaint for protection from abuse, 19-A M.R.S. §

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[2] When subject matter jurisdiction may be determined from the face of the complaint and without the need to resolve any factual disputes, the allegations of the plaintiff's complaint may be taken as true.
Torres-Negron v. J&N Records, LLC, 504 F.3d 151, 162 (1st Cir. 2007).

4007 (2008). Ewing had received notice and had the opportunity for a full hearing on the complaint. Because Ewing and his former wife were in agreement that a protection from abuse order should issue, there was no evidentiary hearing. Recognizing the agreement, the court checked the finding on the form order that "[t]he parties have agreed to the following Order, which is made without findings of abuse."

[¶5] On the prohibition portion of the order, the court checked paragraphs A-1, A-2, B, C, D, and E. By selecting A-1, Ewing was "prohibited from threatening, assaulting, molesting, attacking, harassing or otherwise abusing the plaintiff and any minor child(ren) residing in the household." Box A-2 provided the Ewing was "prohibited from the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily

injury against the plaintiff or a minor child residing in the household." The selection of Box A-1 or A-2 carries additional significance because, as the form order that Ewing received warns: "POSSESSION OF A FIREAREM OR AMMUNITION WHILE THIS ORDER IS IN EFFECT IS PROHIBITED UNDER FEDERAL AND/OR STATE LAW IF ANY ONE OR MORE OF THE FOLLOWING BOXES HAVE BEEN CHECKED: A-1, A-2, OR F."

[¶6] This warning reflects the requirements of federal law, 18 U.S. C. S. § 922(g)(8), that any person subject to a restraint such as in paragraphs A-1 or A-2, entered after a hearing or opportunity for a hearing, is prohibited from possessing or transporting fircarms or ammunition. The mandates of the federal law focus on the restraints ordered after hearing. The fact that an order was entered by agreement, or that it was entered

"without findings of abuse" is irrelevant to the application section 922(g)(8). *See United States v. Young*, 458 F.3d 998, 1008-09 (9th Cir. 2006); *United States v. Lippman*, 369 F.3d 1039, 1042 (8th Cir. 2004). Entry of an order with such restraints has collateral consequences as discussed below.

[¶7] After the court issued the order for protection from abuse, the requirements of the order were entered into the court's computer reporting system, thereby identifying Ewing as a person prohibited from possessing firearms or ammunition pursuant to federal law. This information was distributed to law enforcement agencies, including the United States and Canadian Customs and Border Patrol agencies, through the National Crime Information Center.

[¶8] Ewing is a long-haul trucker. His identification in national databases as a person

prohibited from possessing firearms or ammunition led to lengthy detentions at the United States-Canadian border that made it impossible for him to meet delivery and pickup deadlines. In addition, his work as a Maine guide was adversely affected by his inability to carry a firearm while providing professional guide services.

[¶9] On August 23, 2007, Ewing sent a letter to the District Court and the court's clerk requesting that his designation as a person prohibited from possessing firearms or ammunition pursuant to federal law be removed from the computer reporting system. He alleged that this designation was incorrect and was causing him substantial damage. His principle contention was that the federal law reporting requirements were not triggered because, since the order was entered by agreement, there was no "hearing" or opportunity to participate in a

hearing, as addressed in section 922(g)(8).[3] The court did not take any action after receiving Ewing's letter.

[¶10] On December 12, 2007, Ewing filed a complaint in the Superior Court seeking a declaratory judgment pursuant to 14 M.R.Civ. P. 57 that: (1) the District Court and the clerk incorrectly interpreted and applied 18 U.S.C.S. § 922(g)(8) by identifying him as a person prohibited from possessing a firearm or ammunition when the protection from abuse order was issued by agreement of the parties, and (2) the improper designation deprived him of his rights under the

---

[3] Four United States Court of Appeals opinions have held that the "hearing" prerequisite of 18 U.S.C.S. § 922(g)(8) is met when the parties appear before a judge and have the opportunity to present arguments or evidence, whether arguments or evidence are actually presented or not. *See United States v. Young,* 458 F.3d 998, 1009 (9th Cir. 2006); *United States v. Lippman,* 369 F.3d 1039, 1042 (8th Cir. 2004); *United States v. Calor,* 340 F.3d 428, 430-31 (6th Cir. 2003); *United States v. Banks,* 339 F.3d 267, 272-73 (5th Cir. 2003).

United States and Maine Constitutions and caused him damages. Ewing also sought a writ of mandamus and permanent injunction requiring the clerk to remove his name from the computer reporting system.

[¶11] The State filed a motion to dismiss for failure to state a claim upon which relief may be granted, pursuant to M.R. Civ. P. 12(b)(6). On February 7, 2008, before the Superior Court issued a decision on the motion to dismiss, the protection from abuse order expired.[4] On June 4, 2008, the Superior Court granted the State's motion to dismiss. Ewing then brought this appeal.

---

[4] Because the protection from abuse order has expired, the State asserts that this appeal is moot. The issues raised by Ewing are significant, however, and all protection from abuse orders are time limited. Thus, the issues Ewing raises are issues that are capable of repetition, but, because of time limits in the orders, may escape appellate review. That status creates an exception to the mootness doctrine for issues that may be significant and capable of repetition that may escape appellate review. *Me. Civil Liberties Union v. City of So. Portland*, 1999 ME 121, ¶ 10, 734 A.2d 191, 195. We apply that exception to reach the jurisdiction issue in this case.

II. LEGAL ANALYSIS

[¶12] The Superior Court dismissed Ewing's complaint for failure to state a claim, pursuant to M.R. Civ. P. 12(b)(6). However, the initial inquiry by the court should have been whether it had subject matter jurisdiction pursuant to M.R. Civ. P. 12(b)(1), and therefore had the authority to decide the case before it. *See Hawley v. Murphy,* 1999 ME 127, ¶ 8, 736 A.2d 268, 271 (explaining that without subject matter jurisdiction, a court has no authority to act). Because the existence of subject matter jurisdiction may be raised at any time, even *sua sponte* by an appellate court, we review Ewing's claim under a lack of jurisdiction analysis. *Tomer v. Human Rights Comm'n,* 2008 ME 190, ¶ 8 n.3, 962 A.2d 335, 338. Whether subject matter jurisdiction exists is a question of law that we review de novo. *Id.* ¶ 9, 962 A.2d at 338.

[¶13] Ewing asserts that he may challenge, by a declaratory judgment action in the Superior Court, the administrative action of District Court staff in entering into the court computer database information based on the court order. However, there is no suggestion that the information entered into the system reflected anything other then what appeared on the face of the court order. When parties agree to an order and one party does not initially challenge the order because of a mistaken belief that the agreement, and the "without findings of abuse" declaration, avoids collateral consequences from such orders, the Maine Rules of Civil Procedure dictate the proper avenues to later bring a challenge.

[¶14] If Ewing believed that the order was mistaken in indicating that it was entered after a hearing or an opportunity for hearing, his remedy was a motion to correct a clerical mistake pursuant

to M.R. Civ. P. 60(a). If Ewing believed that the order needed to be amended to address the "hearing" reference, or for any other reason, his remedy, more than a year after judgment, was a motion for relief from judgment pursuant to M.R. Civ. P. 60(b)(6). Any challenge to the District Court's action or lack of action on a Rule 60(a) or Rule 60(b) motion or on Ewing's letter is by a direct appeal to this Court. M.R. App. P. 1. The declaratory judgment law does not provide an alternative avenue for judicial review of a District Court action or lack of action in response to a letter requesting the amendment of a judgment that was within the court's jurisdiction. Because the Superior Court lacked subject matter jurisdiction over Ewing's complaint, it was properly dismissed.

The entry is:

Judgment affirmed.

Attorney for Colby E. Ewing:

Luke M. Rossignol, Esq. (orally)
Bemis & Rossignol, LLC
454 Main Street
PO Box 782
Presque Isle, ME 04769

Attorneys for the Maine District Court and Vickie A. Harris, Clerk of the Maine District Court:

G. Steven Rowe, Attorney General
Christopher C. Taub, Asst. Atty. Gen. (orally)
Office of the Attorney General
6 State House Station
Augusta, Maine 04333-0006

STATE OF MAINE
AROOSTOOK, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO.: CARSC-CV-07-193

COLBY E. EWING,	]
	]
Plaintiff,	]
	][proposed] ORDER
v.	]
	]
STATE OF MAINE DISTRICT COURT	]
AND VICKIE A. HARRIS, AS	]
CLERK OF THE MAINE DISTRICT	]
COURT LOCATED AT CARIBOU,	]
AROOSTOOK COUNTY, MAINE	]
	]
Defendants	]

Upon consideration of Defendant's Motion to Dismiss, and any opposition thereto, it is hereby ORDERED:

1. Plaintiff having failed to state a claim against defendants' Motion to Dismiss is hereby GRANTED.

2. Judgment shall be entered against plaintiff and in favor of defendants on all claims set for in plaintiff's complaint.

Dated: 6/4/08

/s/ Kevin M. Cuddy
Justice, Superior Court

STATE OF MAINE

Location CARIBOU DISTRICT COURT
Docket No. CARDC-PA-2006-00005

LEAH R. EWING

ORDER FOR
PROTECTION FROM ABUSE
19-M.R.S.A. section 4007

V.

COLBY E. EWING

After due notice and ☑ opportunity for full hearing

☐ full hearing on the merits of the complaint for Protection from Abuse, the following parties being present:

☑ Plaintiff ☑ Defendant

THE COURT FINDS THAT:(only checked boxed apply)

☑ (1) The parties are family or household members;

☐ (2) The plaintiff was abused by the defendant;

☐ (3) The defendant presents a credible threat to the physical nature safety of the plaintiff/minor child(ren);

☑ (4) The parties have agreed to the following Order, which is made without findings of abuse.

THEREFORE, it is hereby ORDERED THAT:

☑ (A-1) The defendant is prohibited form threatening, assaulting, molesting, attacking, harassing or otherwise abusing the plaintiff and any minor child(ren) residing in the household.

☑ (A-2) The defendant is prohibited from the use, attempted use or threatened use of physical force that would reasonable be expected to cause bodily injury against the plaintiff or minor child residing in the household.

☑ (B) The defendant is prohibited from having any contact, direct or indirect with plaintiff

☐ Except contact permitted in paragraph I and/or O below

☑ Except he may telephone her on her cell phone once daily between 8 a.m. – 9 a.m.

☑ (C) The defendant is prohibited from going upon the premises of the plaintiff's residence.

☑ (D) The defendant restrained from, repeatedly and without reasonable cause, following the plaintiff.

☑ (E) The defendant is restrained from, repeatedly and without reasonable cause, being at or in the vicinity of the plaintiff's home, school, business or place of employment.

☐ (F) The defendant is prohibited from possession of a firearm or other dangerous weapon.

☐ (G) The plaintiff is granted possession of and the defendant is excluded forthwith and prohibited from entering the residence at_____

_____

Location CARIBOU DISTRICT COURT
Docket No. CARDC-PA-2006-00005

☐ (H) The parties' personal property and household good are divided as follows:

_____

_____

and the following order for protection of property is entered:_____

_____

☐ (I) The plaintiff is awarded temporary parental rights and responsibilities (custody) of minor child(ren), whose names and dates are limited as follows:_____

_

_____

The defendant's rights of contact are limited as follows:_____

_

_____

_____

VIOLATION OF AN ORDER CONTAINED IN PARAGRAPHS (A) THROUGH (I) IS ALWAYS A CLASS D, AND SOMETIMES A CLASS C CRIME. POSSESSION OF A FIREARM OR AMMUNITION WHILE THIS ORDER IS IN EFFECT IS PROHIBITED UNDER FEDERAL AND/OR STATE LAW IF ANY ONE OR MORE OF THE FOLLOWING BOXES HAVE BEEN CHECKED: A-1, A-2, OR F.

It is further ORDERED AS FOLLOWS: (only checked boxes apply)

☐ (J) The defendant shall pay child support pursuant to the attached child support order.

☐ (K) The defendant receive counseling from a social worker, family service agency, mental health center, or psychiatric or other guidance service, as follows:_____

☐ (L) The defendant pay the sum of $_____ per (week) (month) toward the support of the plaintiff, first payment due _____

☐ (M) The defendant is prohibited from interfering with or destroying plaintiff's property.

☐ (N) The parties' personal property and household goods are divided as follows:

_____

_____

and the following order for protection of property is entered:_____

_

_____

☐ (O) The defendant's rights of contact are limited as follows:_____

☐ (P) It is furthered ORDERED:_____

_____

☐ (Q) See the attached additional sheet(s) which are incorporated herein by reference.

MONEY JUDGMENT ORDERS

☐ (R) The defendant pay to the plaintiff, the sum of $_____ as court costs. Payment is to be made within_____days, execution to issue.

☐ (S) The (defendant) (plaintiff) pay to

_____

the sum of $_____ as counsel fees; the sum of $_____ as court costs. Payment is to be made within _____ days, execution to issue.

☐ (T) No child support order is issued at this time (but will be issued as soon as the parties file a child support affidavit, to be filed no later than_____) (because there is a pre-existing child support order).

WARNING: VIOLATION OF PARAGRAPHS "J" THROUGH "T" MAY BE CONTEMPT OF COURT. THESE PARAGRAPHS ARE ALSO ENFORCEABLE AS A CIVIL JUDGMENT.

WARNING TO THE DEFENDANT: AS LONG AS THIS ORDER IS IN EFFECT, YOU MUST OBEY IT. NO ONE, INCLUDING THE PLAINTIFF, CAN GIVE YOU PERMISSION TO VIOLATE THE PROVISIONS OF THIS ORDER.

This order is effective forthwith and shall remain in force and effect
until 2/7/08
unless earlier modified or vacated by order of court or, with respect to Child Support or Parental Rights and Responsibilities, by a Case Management Officer.

It is ORDERED that a copy of this Order be served in hand on the defendant by the following law enforcement agency: CT. SEC OFFICER

Copies of this order shall be furnished by the clerk to the law enforcement agency with jurisdiction in the location of the plaintiff's residence.

This Order is incorporated into the docket by reference pursuant to M.R.Civ. P 79 (a).

Date: 2/7/06 */s/ Ronald A.Daigle*

A true copy, attest: */s/Carolyn J. Adams, Asst. Clerk*

****

On _____, I made service of the Order for Protection from Abuse by delivering a copy in hand to the defendant at

_____

_____

Defendant's date of birth

_____

_____
Authorized Officer

PA-009, Rev. 07/2003

LEAH R EWING – PLAINTIF
VS

COLBY E EWING – DEFENDANT
368 HARDISON ROAD
CARIBOU ME 04736

DISTRICT COURT
CARIBOU
Docket No CARD-PA-2006-05

DOCKET RECORD

Filing Document: COMPLAINT Minor Case Type: PROTECTION FROM ABUSE

Filing Date: 01/05/2006

Docket Events:

01/05/2006 FILING DOCUMENT – COMPLAINT FILED ON 01/05/2006
Party(s): LEAH R EWING, COLBY E EWING

01/05/2006 ORDER – TEMPORARY ABUSE ORDER ENTERED ON 01/05/2006 (Expired: 02/07/2006)
BERNARD G O'MARA, JUDGE

It is ORDERED that: The defendant is prohibited from:
Having any contact with plaintiff, directly or indirectly;
imposing any restriction upon the person or liberty of the plaintiff(s); threatening, assaulting, molesting, harassing, or otherwise disturbing the peace of the plaintiff(s);
repeatedly and without reasonable cause, following the plaintiff or being at or in the vicinity of the plaintiff's home, school, business or place of employment; entering the family residence or premises of the separate residence of the plaintiff at:
taking, converting or damaging property in

	which the plaintiff may have legal interest; and This Order is effective forthwith and will remain in effect until further order of the court.
	HEARING – FINAL HEARING SCHEDULED FOR 02/07/2006 @ 9:00
01/05/2006	NOTICE TO PARTIES Party(s): LEAH R. EWING, COLBY E. EWING
01/05/2006	ORDER – TEMPORARY ABUSE ORDER ISSUED ON 01/05/2006 (Expired: 02/07/2006)
	SUMMONS/SERVICE – SUMMONS TO APPEAR FOR HEARING ISSUED ON 01/05/2006
01/05/2006	CAROLYN ADAMS, ASSISTANT CLERK
	Party(s): LEAH R EWING, COLBY E EWING
01/05/2006	ORDER – TEMPORARY ABUSE ORDER EDI ON 01/05/2006 (Expired on 02/07/2006) LAST EDI SENT: 02/07/2006 14:45:09
	SUMMONS/SERVICE – SUMMONS TO APPEAR FOR HEARING ISSUED ON 01/19/2006
01/19/2006	
	HEARING – FINAL HEARING SCHEDULED FOR 02/07/2006 @ 1:00
01/19/2006	
	ORDER – CONTINUANCE & EXTENSION GRANTED ON 01/19/2006
01/19/2006	RONALD A DAIGLE, JUDGE
	Party(s): LEAH R EWING, COLBY E EWING
01/23/2006	ORDER – TEMPORARY ABUSE ORDER SERVED ON 01/05/2006 (Expired 02/07/2006)

ORDER – PROTECTION ORDER DPS MODIFY EDI ON 01/23/2006

01/23/2006 DEFENDANT DETAILS MODIFIED: RACE, PARTY-LEGAL-ADDRESS. PROTECTION ORDER IS SERVED.

SUMMONS/SERVICE – SUMMONS TO APPEAR FOR 01/24/2006
HEARING SERVED ON 01/21/2006

HEARING – FINAL HEARING HELD ON
02/07/2006
02/07/2006

HEARING – FINAL HEARING HELD ON
02/07/2006
02/07/2006 RONALD A. DAIGLE, JUDGE

Defendant Present in Court

Party(s): LEAH E. EWING, COLBY E. EWING
02/07/2006 FINDING – FINAL ABUSE ORDER GRANTED ON 02/07/2006
RONALD A. DAIGLE , JUDGE

Defendant Present in Court

Party(s): LEAH E. EWING, COLBY E. EWING
ORDER – FINAL ABUSE ORDER ENTERED ON
02/07/2006

RONALD A. DAIGLE, JUDGE

Defendant Present in Court
Plaintiff present in court.
Defendant present in court.
THE COURT FINDS THAT:
The parties are family or household members;

The parties have agreed to the following Order, which is made without findings of abuse.

It is ORDERED that: The defendant is prohibited from:

threatening, assaulting, molesting, attacking, harassing or otherwise abusing the plaintiff and any minor child(ren) residing in the household.

the use, attempted use or threatened use of physical force that would reasonably be expected to cause bodily injury against the plaintiff or a minor child residing in the household.

having any contact, direct or indirect with plaintiff

Except DEF MAY TELEPHONE HER ON HER CELL PHONE ONCE DAILY BETWEEN 8AM AND 9PM

going on the premises of the plaintiff's residence.

repeatedly and without reasonable cause, following the plaintiff.

repeatedly and without reasonable cause, being at or in the vicinity of the plaintiff's home, school, business or place of employment.

This Order meets the criteria that disqualifies the defendant from possessing, purchasing, or receiving a firearm per Federal law, 18 USC 922 because the defendant 1. received actual notice of the hearing and had an opportunity to participate, 2. is restrained

from harassing, stalking, threatening, or engaging in other conduct, 3. presents a credible threat to the physical safety of the plaintiff and/or minor child(ren) or is prohibited from the use, attempted use, or threatened use of physical force.

These orders are effective forthwith and shall remain in full force and effect until 02/07/2008
unless earlier modified or vacated by order or court or, with respect to Child Support or Parental Rights and Responsibilities, by a Case Management Officer.

Party(s): LEAH E. EWING, COLBY E. EWING

02/07/2006 ORDER – FINAL ABUSE ORDER ISSUED ON 02/07/2006

RONALD A. DAIGLE, JUDGE

Defendant Present in Court

Party(s): LEAH E. EWING, COLBY E. EWING

02/07/2006 ORDER– FINAL ABUSE ORDER SERVED ON 02/07/2006

Party(s): LEAH E. EWING, COLBY E. EWING

02/07/2006 ORDER– FINAL ABUSE ORDER SERVED ON 02/07/2006

LAST EDI SENT: 02/07/2006 14:45:34

A TRUE COPY
ATTEST: _____
Clerk

BEMIS & ROSSIGNOL, LLC
ATTORNEYS & COUNSELORS AT LAW
454 MAIN STREET
P.O. BOX 782
PRESQUE ISLE, ME 04769-0782

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August 23, 2007

Neali Moir, Asst. Clerk
Maine District Court
144 Sweden Street
Caribou, ME 04736-2147

RE: **Colby Ewing/Computer Records regarding Order for Protection from Abuse (CARDC-PA-2006-00005)**

Dear Neali:

I write on behalf of Colby Ewing to inform the District Court that it appears as though the Court's computer reporting system contains incorrect information regarding Mr. Ewing. Specifically, the Court's computer reporting system contains information that Mr. Ewing is a person prohibited from possessing a firearm under federal law. I understand that this information was entered into the Court's computer reporting system based on the
~~~~~~~~~~~~~~~~

fact that the Caribou District Court issued an Order for Protection from Abuse against Mr. Ewing in favor of Leah R. Ewing on February 7, 2006, which checked off boxes (A-1) and (A-2) of the form Order for Protection from Abuse (form number PA-009, Rev. 07/2003).

Based on my review of the applicable federal laws and my consultation with local prosecutors and the Caribou Police Chief, I believe that Mr. Ewing is not a person prohibited from possessing a firearm as a result of the Order for Protection from Abuse issued by the District Court. Therefore, the information entered into the District Court's computer reporting system stating so is incorrect.

Because Maine law does not prohibit possession of a firearm based solely on the issuance of an Order for Protection from Abuse, the prohibition arises under federal law. Under 18 U.S.C. § 922(g), a person is prohibited from possessing a firearm only if they are the subject of a ***qualifying*** domestic protective order. For a domestic protective order to be "qualifying," it must:

(A) be issued after a hearing of which the Defendant received actual notice and an opportunity to participate;

(B) restrain the person from harassing, stalking, or threatening an intimate partner of such person or a child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; ***and***

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child, or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

See 18 U.S.C. § 922(g)(8)(A) – (B). Because the provisions of § 922(g)(8)(A), (B), and (C) are joined by the conjunction "and" (highlighted above), all three provisions must be met in order for a domestic protection order to qualify to make the subject of the order a prohibited person. Because the first, threshold provision of § 922(g)(8) requires that a protection order be issued after a hearing, a person cannot be branded a prohibited person on the basis of a domestic protection order under federal law unless the order was, in fact, issued after a hearing.

The order issued against Mr. Ewing was issued by agreement of the parties without a hearing, and was made without any findings of abuse. Thus, even though boxes (A-1) and (A-2) of the Order for Protection from Abuse issued by the District Court are checked off, the federal prohibition against possession of a firearm is not triggered because the Order was not issued after a hearing. Accordingly, the information identifying Mr. Ewing as a prohibited person entered into the District Court's computer reporting system, and shared with all law enforcement agencies through the NCIC and other national databases, is incorrect and should be

removed from the District Court's computer reporting system.

The presence of this incorrect information in the District Court's computer records linked to Mr. Ewing has caused him substantial damages and hardship. Mr. Ewing is a long-haul truck driver and his job requires him to travel between the United States and Canada on a regular basis. Since the issuance of the February 7, 2006 Order for Protection from Abuse and the District Court's incorrect identification of Mr. Ewing as a prohibited person, Mr. Ewing has been subjected to constant and lengthy detentions and searches of his person and vehicle exceeding 3-5 hours whenever he attempts to re-enter the United States from Canada. The delays make it nearly impossible for him to meet his hourly driving requirements which, in turn, make it impossible for him to meet delivery and pickup deadlines for his employer. Because of these problems, Mr. Ewing is no longer able to perform deliveries which require him to travel to Canada. This has substantially reduced his work opportunities and has jeopardized his employment with his current employer.

In addition to these problems, the United States Customs and Border Patrol agencies recently seized Mr. Ewing's FAST commercial driving card which was set to expire in 2010. This card is supposed to allow Mr. Ewing to be processed much more quickly and smoothly at border crossings. Mr. Ewing and his employer obtained the FAST card after completing a lengthy, thorough, and expensive

application process. They have now lost the benefit of the card and their work in obtaining the card.

Given the facts and law discussed above, I request on behalf of Mr. Ewing that the District Court correct the information obtained in its computer reporting system to remove any statements identifying Mr. Ewing as a person prohibited from possession a firearm. I also respectfully request that the corrections be made as expeditiously as possible in light of the substantial problems and hardship Mr. Ewing has been and is experiencing with his employment as a result of this error. We believe that the District Court has to make the correction in its computer system because all of our efforts to address the issue with United States and Canadian Customs agencies and with the Maine State Police Access Integrity Division have resulted in referrals to the District Court which entered the Order.

Please feel free to contact me, or have your central division manager contact me, if you have any questions or require additional information regarding this matter.

I thank you for your prompt attention to this matter.

Sincerely,

/s/ Luke M. Rossignol

Luke M. Rossignol
LMR/kpb

cc: Colby Ewing